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Article

The Role of Public Interest Litigation in the Achievement of Sustainable Waste Management in Ethiopia [†]

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Abstract: This research assessed the role of public interest litigation in the achievement of sustainable waste management in the Addis Ababa Administration (AAA) of Ethiopia. It employed a single country case-oriented comparative research design, and data triangulation was used to establish the validity of the findings. The research first shows Ethiopia's commitment to sustainable waste management, implementing environmental tax and the command-and-control instruments of the polluter-pays principle and public interest litigation within the context of environmental justice. Secondly, it shows that public interest litigation is one of the innovative techniques in the struggle against waste mismanagement across all legal systems. Thirdly, it demonstrates the potential role of public interest litigation in Ethiopia in encouraging the federal and regional environmental protection and management organs to implement environmental tax and command-and-control instruments. Fourthly, it uncovers that public interest litigation is not fully compatible with the Civil Procedure Code of Ethiopia. Fifthly, it shows the failure of the judiciary system of Ethiopia to accommodate environmental courts and tribunals that flexibly and innovatively adopt public interest litigation. Sixthly, it reveals that, in Ethiopia, the scope of public interest standing is highly restrictive for Civil Society Organizations (CSO). Finally, it implies that the legal viability and administrative feasibility of environmental public interest litigation in Ethiopia is in its infancy, and its crystallization is partly contingent on the cautious review of the Civil Procedure Code and CSO laws and on greening the judiciary system.

Keywords: sustainable waste management; the polluter-pays principle; environmental justice; environmental public interest litigation

1. Introduction

(a) Background of the Research

Environmental justice is one of the goals of sustainable development, and public interest litigation is one of the innovative techniques for its implementation [1,2].

Public interest litigation is described as legal tools that allow individuals, groups and communities to challenge government decisions and activities in a court of law or any other competent body with judicial power for the enforcement of public interest [3].

When there is market failure, states are expected to protect the environment through the use of taxation and the command-and-control instruments of the polluter-pays principle (see details in

Section 2.2). Simultaneously, in seeking to hold states responsible for environmental pollution, public interest litigation could follow either a fundamental rights approach or a duty of care method [4].

Correspondingly, the historical use of public interest litigation within the context of environmental justice shows its potential role in the struggle against waste mismanagement in both common and civil law jurisdictions of developed and developing countries (see details in Section 2.4.2). Thus, the application of public interest litigation in combating unsustainable waste management is not context-specific, and it can be stretched across all legal systems.

As a corollary, it is safe to conclude that the potential role of public interest litigation in the struggle against waste mismanagement is applicable in Ethiopia [5,6].

(b) Statement of the problem

Ethiopia is committed to sustainable waste management (see details in Section 2.1), the polluter-pays principle [7] and public interest litigation within the context of environmental justice [8–10].

Nevertheless, at the moment, Ethiopia in general, and the Addis Ababa Administration (AAA) in particular, has failed to implement the environmental tax and command-and-control instruments of the polluter-pays principle [7,11,12], and they are exposed to:

1. Solid waste [13,14], sewage [15–17] and effluent mismanagement [18–23]; and
2. Public budget allocation for the social costs borne by their public authorities for pollution prevention and control [24–27].

Thus, this research assessed the role of public interest litigation in the struggle against waste mismanagement in the AAA of Ethiopia (see details in Section 3.3).

(c) Research Question

The aim of this research was to investigate public interest litigation as a potential tool in the struggle against waste mismanagement in Ethiopia. Correspondingly, the following research questions were addressed: Considering past and present cases as well as the potential future prospects of this technique, can public interest litigation play an effective role in combating unsustainable waste management? What are the main obstacles to environmental public interest litigation? In this context, the effectiveness of this technique refers to the potential for encouraging environmental protection and management organs to implement the environmental tax and command-and-control instruments of the polluter-pays principle.

(d) Methodology

The research was delimited to the self-governing AAA, which is the capital city of Ethiopia, an integral part of the federal jurisdiction and accountable to the federal government [7,28]. The research assessed the role of public interest litigation in the achievement of sustainable waste management in the AAA of Ethiopia. A qualitative method and a single country case-oriented comparative research design that uses concepts that are applicable to other countries were employed. The qualitative analysis was iterative. Inferences were drawn through interpretation, and their validity was assured through primary and secondary data source triangulation. The operationalization of the key words is presented in Section 2, through the development of a literature review-based conceptual framework of public interest litigation in the context of sustainable waste management. Parallel to this, the research used federal and AAA environmental and tax laws, and official documents as the major sources of data on the role of public interest litigation in the achievement of sustainable waste management in the AAA of Ethiopia. The primary and secondary data of the research were triangulated and interpreted within the context of the conceptual framework of the research, and then concluding remarks and implications were drawn.

(e) Organization of the Article

The article is organized into four sections. After the Introduction, Section 2 deals with the conceptual framework of public interest litigation in the context of sustainable waste management. Section 3 assesses the role of public interest litigation in the achievement of sustainable waste management in the Addis Ababa Administration of Ethiopia. Finally, Section 4 presents the conclusion and implications of the research.

2. Conceptual Framework of Public Interest Litigation in the Context of Sustainable Waste Management

2.1. Sustainable Waste Management and Environmental Justice

Sustainable development goals (SDGs) are global in nature and universally applicable. They are integrated and indivisible [1], and the achievement of a particular SDG mutually contributes to the progress of other SDGs [29,30]. Accordingly, the proper implementation of public interest litigation within the context of environmental justice mutually enhances the progress of sustainable waste management which is defined as “using material resources efficiently to cut down on the amount of waste produced, and, where waste is generated, dealing with it in a way that actively contributes to SDGs” [31].

Correspondingly, Ethiopia has embraced the 2030 Agenda for Sustainable Development, Agenda 2063 of Africa and the Addis Ababa Action Agenda, and by 2030 it is aspiring to the achievement of sustainable waste management and environmental justice [1,32,33].

2.2. The Roles of Environmental Tax and Command-and-Control Instruments in the Achievement of Sustainable Waste Management

Market failures result from the failure of the market demand and supply schedules to reflect the full prices of externalities [34,35]. Pollution/depletion, where private benefits and costs diverge from social benefits and costs [35–37], is one of the classic cases of negative externality [35,37–41].

As a result, an unregulated market has room for unabated externalities [36,37,42,43] and grants an implicit subsidy to polluters [44,45]. Thus, when a market fails to appreciate the opportunity costs of environmental use, it causes overuse of the environment and overproduction of ecologically harmful products.

Meanwhile, while command-and-control instruments limit the quantity of residuals that each actor may generate, environmental taxes provide an ideal means of injecting appropriate price signals and creating markets for unpriced resources and environmental services [37,39,41,43,45–47].

As a result, when there is market failure, taxation and command-and-control instruments are the two supplementary/complementary policy mix instruments of the polluter-pays principle [38,39,41,43,48].

Mutatis mutandis, taxation and command-and-control have instrumental roles in the achievement of sustainable waste management in Ethiopia (see details in Section 3.3.1).

2.3. The Notion of Legal Capacity, Legal Standing and Justiciability

2.3.1. Legal Capacity to Sue or be Sued

Capacity is the power or ability to perform juridical acts. Being a party to a suit is one of the juridical acts. Hence, capacity to sue or be sued refers to a person’s ability to represent his interest in a suit before a court of law without the assistance of another [49].

Accordingly, one could consider capacity as the most fundamental one as it provides for the definition of those beings or things, either natural or artificial, which will be bound by the law. One could generally say that the latter regulates the conduct of persons existing within a community [50].

Thus, we can observe beings or things having rights and duties under the law, and others having no full rights and duties. If someone or something falls within the first category, the whole field of the law will become applicable to him or it; if not, he or it will not be fully bound by the law [50].

Under the Ethiopian legal system, the civil procedure code provides that any person capable under the law may be a party to a suit [51]. This means that any person capable under the law can file a suit in his own name. In such circumstances, he is referred to as the named plaintiff or the named defendant. Hence, for a person to sue as a plaintiff or be sued as a defendant in his name, the issue of capacity has to be certain.

The reading between the lines of the above propositions does not mean that an incapable person cannot sue. That is, the fact that only capable persons can sue or be sued in their name does not imply that incapable persons under the law cannot sue in their own names, but that they must institute what are called representative suits [51].

Legal personality is bestowed to physical persons and legal persons. The first category consists of human beings and the second consists of entities all kinds which are recognized as holding rights and duties in the same way as human beings [52].

To be a holder of legal rights, there are four criteria that must be satisfied. All these criteria count towards making a thing count jurally—to have legally recognized worth and dignity in its own right. They are [52]:

1. The establishment of public authoritative bodies which are capable of giving some amount of review to actions that are inconsistent with rights bestowed to physical or legal persons.
2. The right of a thing to institute legal actions at its behest.
3. In determining the granting of legal relief, the court must take injury to it into account.
4. The relief must run to the benefit of it.

Concurrently, the characteristic of personality is the capacity to have or to enjoy rights and duties under the law that are enforceable by legal mechanisms as they exist in the society [53].

2.3.2. Legal Standing and Justiciability

The word “standing” emerged gradually during the twentieth century, coming into common use only from about the 1950s. Legal standing is in many ways a reflection of social conscience, expanding with socially recognized issues over time and slowly embracing environmental issues.

The concept of standing has also expanded from the individual to the group, and now it embraces also government actions [54].

Standing focuses on the question of whether the litigant is the legitimate party to fight the lawsuit, not whether the issue itself is justiciable [54].

The line between the requirement of standing and justiciability of the matter is by no means sharply and clearly drawn. However, it can be clarified by saying that standing refers to whether a particular applicant should be entitled to apply to a court for relief, while justiciability relates to the question of whether any applicants should be so entitled [55]. In other words, while standing is determined from the particular applicant’s perspective, justiciability is determined from the matter per se.

As a corollary, while standing is needed to get an entry for hearing by a court of law or any other competent body with judicial power, justiciability is required in order for the petition to not be thrown out as unsuitable for adjudication by a court of law or any other competent body with judicial power [56].

2.4. Nature and Historical Use of Environmental Public Interest Litigation

2.4.1. Nature of Traditional and Public Interest Litigations

a. Nature of Traditional Litigation

Traditional litigation is a rule of ancient vintage and it arose during an era when private law dominated the legal scene and public law had not yet been born [56]. Until the arrival of public interest litigation, civil litigation was patterned exclusively on the traditional model [56].

The traditional concept of adjudication has several characteristics [57]. First, the case has a retrospective orientation; the court must decide questions of fact and law pertaining to past events.

Second, right and remedy are closely inter-related. Third, the lawsuit is bounded in time and effect; that is, judicial enrollment ends with the determination of the disputed issues, and the impact is limited to the parties before the court.

The traditional rule in regard to locus standi was that judicial redress was available only to a person who had suffered a legal injury by reason of violation of his legal right [58]. That is, the basis of entitlement to judicial redress is personal injury to property, body, mind or reputation arising from the violation of legally protected interests of the person.

If a person suffered injury along with the other members of the public, he had no access to the court, unless he suffered additional injury over others. That is, a person could have standing to vindicate a public right or interest if he could show that he had been specially and differently aggrieved by injuries to the public [57].

There are two justifications set by the proponents of traditional standing [57]. The first one is that because it is a civil suit, it concerns individual interest/right. It is up to a concerned party only to either litigate or abandon a claim. Hence, no other person could decide to bring action for a real party with interest in a suit. The second reason is that it enables defendants to avoid facing multiple suits over a single cause of action.

Despite the above justifications, several defects and limitations are inherently present within the very nature of the traditional procedure. A few glaring and flagrant defects are the following [56]:

1. The purpose of the traditional procedure is to enforce the rights of one individual against another, and not to enforce basic human rights of the public.
2. The narrow ambit of locus standi in traditional litigation permits entry only to aggrieved persons and not to any member of the public at large, acting bonafidely.
3. It does not provide any legal assistance to public interest groups, as it is less concerned with the legal aid movement.
4. Relief is provided only to the individuals who are personally and differently aggravated, and not to the diffused interest of the society.
5. It is an isolated individual effort of the aggrieved person to seize justice into his hand. Thus, traditional standing is certainly not a welcome opportunity for the government and its officers to examine the reality of the rights of the society.

For the very reasons above, the conventional method of justice administration is not adequate per se. It may be good for the protection of property rights, but it is not effective at administering social justice and enforcing the human rights and constitutional freedom of the millions who do not have access to courts [56].

Therefore, ensuring access to the court for those who demand social justice and enforcing the rights of the society require alternation and modification in the procedural techniques and methods of legal remedies.

Correspondingly, damage to publicly owned and publicly possessed natural resources, and to publicly owned but privately possessed natural resources that have a particular value to the public, is damage of a collective nature; and because no concrete individual interests are harmed, damages for this type of injury are in principle not recoverable under the traditional tort law [59].

b. Nature of Public Interest Litigation

The use of the term public interest litigation to cover the efforts to provide legal representation began in the 1960s. However, the various programs that contributed to the shaping of the ideology underlying the public interest law can be traced back to 1876 when the first legal aid office was established in New York City. The funding by private foundations led to the rapid development of public interest litigation and the activities associated with it [60].

The emergence of public interest litigation over the last forty years has been a salutary development towards providing the vast majority of citizens with access to just and effective protection

of their fundamental rights. Therefore, public interest litigation is a new paradigm for citizens to express their concerns for events occurring at the national and international level [61].

Initially, the major public interest litigation centers handled issues relating to civil rights, civil liberties, problems of the poor and social and political dissidents. Their chief clients and law suits were their principal political tools. By the end of 1975, however, the universe of public interest litigation had expanded and as a result its spectrum of issues came to include consumer protection, environmental protection, educational reform and the like [62].

Public interest litigation as it has developed in recent years marked a significant departure from traditional judicial proceedings. The guarantee of fundamental rights and the assurance of directive principles, described as the conscience of different constitutions, would have remained empty promises for the majority of illiterate and indigent citizens under adversarial proceedings. Public interest litigation has been a conscious attempt to transform the promises enshrined in different legal instruments into reality [63].

Public interest litigation is part of the struggle by, and on behalf of, the disadvantaged to use law to solve social and economic problems arising from a differential and unequal distribution of opportunities and entitlements in society. In an effort to procure justice between generations it is also concerned with preventing the present and future needless exploitation of human, natural and technological resources [62].

For the above reasons, the battle over expanded standing to sue is, in short, about whether everyone should have access to justice. Those with money and power already have access to justice. The battle over standing to sue is, therefore, about whether other citizens have access as well. In this respect, if democracy is for all, if the rule of law is for all, and if justice is for all, then standing should be for all as well [63].

This implies that the directions and commands issued by courts of law in public interest litigation are for the attainment of justice for the society at large, and not for benefiting only personally aggrieved individuals. Thus, any public-spirited person dedicated to a public cause has standing to bring a common cause before court. In this case, the center of gravity of justice is shifted from the traditional individualism of locus standi to the community orientation of public interest litigation [61].

Therefore, public interest litigation envisages [60]: (a) a court action by an individual or a group of individuals belonging to a community or an indeterminate class against any person who violates the law or an administrative wrong that remotely or equally affects the members of that community or class; and (b) a court action by a public-spirited citizen or a body devoted to the public cause to vindicate the rights of individuals, groups or even the public at large against a person who violates the law or an administrative wrong, though the person or body undertaking the court action may not have suffered any injury personally.

In public interest litigation, the petitioner seeks to champion a public cause for the benefit of the society. Again, the focus dictates the principal features of the litigation [57]. First, since the litigation is not strictly adversarial, the scope of the controversy is flexible. Parties and official agencies may be joined as the litigation unfolds, and new and unexpected issues may emerge to dominate the case. Second, the orientation of the case is prospective. The petitioner seeks to prevent illegitimate affairs from continuing into the future. Third, because the relief sought is corrective rather than compensatory, this type of litigation does not only depend on the right asserted. Fourth, it is difficult to delimit the duration and effect of this new kind of litigation. Prospective judicial relief implies continuing judicial involvement. The parties often return to the court for fresh directions and orders. Finally, because the relief is sometimes directed against government policies, it may have impacts that extend far beyond the parties in the case. In view of these features, it is a pressing need to establish Environmental Courts and Tribunals that flexibly and innovatively adopt public interest litigation [2].

The development of public interest litigation with the above stated features emanates from the fact that it provides a means to redress public wrongs which remained un-remedied under the traditional rules of locus standi. Traditionally, even when an individual had the will and capacity to approach the

court, the individual or groups suffering from adverse administrative action or from acts of persons who violate the law may not themselves be in a position to undertake litigation to vindicate their interests because of poverty, ignorance, and/or fear. Moreover, the interests affected may be so minute that there may not be any incentive to one individual to undertake court action to vindicate his grievance.

In a nutshell, public interest litigation has created a ray of hope in the dark abyss of civil litigation and injustice [56]. It is an effort made to wipe tears from every eye. As such, governments and their officers in any corner of the world must welcome public interest litigation, because it would provide them with an occasion to examine whether the society is attaining its rights under the legal system [56].

2.4.2. Historical Use of Public Interest Litigation in the Protection of the Environment

When there is market failure, states are expected to protect the environment through the use taxation and the command-and-control instruments of the polluter-pays principle [38,39,41,43,48]. Simultaneously, in seeking to hold states responsible for environmental pollution, public interest litigation could follow either a fundamental right approach or a duty of care method [4].

Certainly, the environmental rights-based litigation has a number of advantages. Significantly, rights rhetoric has tremendous potential for the mobilization of citizens for a cause [64]. Additionally, human rights are universal in scope, and therefore this argument is applicable beyond the national boundaries of a single state. Hence, it could be employed in cases before regional and international courts [4].

In addition, the historical use of public interest litigation within the context of environmental justice shows its potential role in the struggle against waste mismanagement in both common and civil law jurisdictions of developed and developing countries [4]. Thus, the application of public interest litigation in combating unsustainable waste management is not context-specific, and it can be stretched across all legal systems [4].

As a corollary, it is safe to conclude that the potential role of public interest litigation in the struggle against waste mismanagement is applicable in Ethiopia [5,6].

3. The Role of Public Interest Litigation in the Achievement of Sustainable Waste Management in Ethiopia

Subject to the conceptual framework of the research under Section 2, this section appraises the legal framework, role and obstacles of public interest litigation in the achievement of sustainable waste management in Ethiopia.

3.1. Legal Framework of Environmental Public Interest Litigation in Ethiopia

3.1.1. Liberalization of Standing that Led to Environmental Public Interest Litigation

Under the Ethiopian legal system, all persons have the right to live in a clean and healthy environment [8]. Since the right to live in a clean and healthy environment is part of the fundamental rights and freedoms of the Constitution of the Federal Democratic Republic of Ethiopia (FDRE), the federal and state legislative, executive and judicial organs at all levels and all citizens have the responsibility and duty to respect and enforce it [8,9].

Along with bringing about the legal penetration of environmental rights and duties, the Environmental Policy of Ethiopia [65] and the Rio Declaration [66] call for effective access to judicial and administrative proceedings. Concomitantly, the FDRE Constitution stipulates the following [8]:

1. Everyone has the right to bring a justiciable matter to, and to obtain a decision or judgment by, a court of law or any other competent body with judicial power
2. The decision or judgment referred to under sub-article 1 of this article may also be sought by any group or person who is a member of or represents a group with similar interests.

According to Fasil Nahom, Article 37 (2) (b) is designed to ensure that the door is wide open for the public to satisfy its needs of access to justice. What this means is that the constitution is in favor of broad, social issue-oriented employment of the law and its institutions, rather than a narrow legalistic approach that makes the law distant from everyday concerns of the society and difficult to access [67].

In this way, the constitution would work for making the law and the court truly serve the people rather than merely serving the lawyers. Beyond the traditional issues, the law and the courts would interest themselves and actively engage in broad social issues, such as ensuring a clean and healthy environment [67].

Accordingly, by stressing the importance of compliance with duties and not only rights, this expansion of the ability to sue will paradoxically build a stronger framework for the protection of diffused rights, such as the right to live in a clean and healthy environment.

Thus, consonant with the FDRE Constitution and the Environmental Policy of Ethiopia, the House of Peoples' Representatives has promulgated the Environmental Pollution Control Proclamation, which stipulates [9]:

Any person shall have, without the need to show any vested interest, the right to lodge a complaint at the authority or the relevant regional environmental agency against any person allegedly causing actual or potential damage to the environment.

Based on this provision, the central question for public interest standing is whether a sufficient public injury had taken place as has been alleged to support the claim that the petition was brought in the public interest. Thus, the public interest standing provision should be read as doing away with the necessity of the plaintiff's vested interest.

Consequently, we can infer that a restrictive view of locus standi and person aggrieved has been supplemented by public interest standing. Thus, any public-spirited person dedicated to the public cause has standing to bring a common cause before a court of law.

Finally, with respect to the format, the public interest litigation form of pleading should be on the basis of Article 80 (2) and the statement of claim Form No. 36 (first schedule) of the Civil Procedure Code of Ethiopia [51].

3.1.2. Public Interest Standing in Administrative and Judicial Action

In environmental governance, one of the forces that impelled the liberalization of standing stemmed from the need to check substantive and/or procedural ultra vires of environmental authorities.

In Ethiopia, the objective of the Ministry of Environment, Forest and Climate Change is to formulate policies, strategies, laws and stakeholders that foster social and economic development in a manner that enhances the welfare of humans and the safety and sustainability of the environment. It is also to spearhead efforts to ensure the effectiveness of their implementation [68]. In line with this, it has also the duty to coordinate measures and to ensure that the environmental objectives provided under the constitution and the basic principles set out in the Environmental Policy of Ethiopia are realized [68]. On the basis of the above objectives and duties of the Ministry, we can infer that it is vested with enormous regulatory powers.

Despite the above regulatory powers vested in the Ministry, however, it could delay, miss deadlines, convert mandatory standards to discretionary ones, create loopholes, water down strict statutes in the regulatory process, or simply refuse to use its enforcement powers when faced with blatant violations [69]. In such cases, if it causes damage to any person who has vested interest, it will be legally liable. Nonetheless, when its acts and/or omissions cause damage to the public interest, the scheme of traditional litigation precludes relief and renders its failure immune from judicial scrutiny [69]. At the same time, Ethiopia's unpreparedness to have a comprehensive administrative law reinforces the substantive and/or procedural violations of public officials.

To curb instances of such environmental organs' lawlessness with diffused impacts, therefore, the House of Peoples' Representatives of Ethiopia expanded the standing in environmental proceedings to enable every citizen to challenge their inaction or abuse in the interest of the public, even when the citizen has not yet sustained personal injury [9].

In this case, though public interest standing provisions are drawn cautiously, they represent a substantial qualification of two of the more durable dogmas of public law. The first is that prosecution and enforcement is solely the business of public officials and perpetrators. The second, the corollary of the first, is that regulatory and enforcement priorities are left to the authorities with little or no interference from outsiders, particularly the courts [70]. In this respect, while the Environmental Pollution Control Proclamation by no means has discarded the notion of public control of public prosecution, the novel fashioning of the public interest standing provision recognizes that compliance with environmental laws is the business of an alert community as well as of trained specialists.

As a result, the Environmental Pollution Control Proclamation, which is the first of its kind and thus a prototype for public interest standing, provides that [9]:

[w]here the authority or regional environmental agency fails to give a decision within thirty days or when the person who has lodged the complaint is dissatisfied with the decision, he may institute a court case within sixty days from the date the decision was given or the deadline for decision has elapsed.

The article proposes to grant public interest groups a secondary right of standing. Only in cases where the public authorities do not act at all, or not properly, do alert citizens or public interest groups have the right to take legal action. Alert citizens or public interest groups thus must respect the waiting period of thirty days, during which the environmental authorities have the exclusive right to take action and decide on the necessity and extent of restoration measures. In other words, the notice provisions are intended to afford the authority an opportunity to do its job. They are not to frustrate the citizens' actions with procedural trickery, and they should be construed flexibly and realistically to advance the essential purpose. In cases of urgent situations, however, there is legal ground to grant such public-spirited individuals the right to directly ask a court for an injunction in order to prevent significant damage or avoid further damage to the environment [51].

In the case of judicial review, when the person who has lodged the complaint is dissatisfied with the decision, it seems that public interest groups are not only granted the right to challenge the decision of the public authorities not to recover damage, but they may also challenge any relevant decision, including the one regarding the selection of the most appropriate restoration alternative if they can make a plausible case that the selected alternative is inappropriate. The latter might be the case if the selected restoration alternative is inadequate to fully restore at a reasonable price the damaged natural resources, or if a full restoration would take too long [59].

In line with the above points, a vital issue that needs to be understood by any individual or group considering bringing a judicial review is timeliness. The rule is that an application for judicial review in an environmental proceeding must be brought promptly and in any event within sixty days from the date the decision was given or the deadline for decision has elapsed [9]. The justification behind this period of limitation could be the fact that judicial review is usually aimed at stopping decisions before they are put into effect rather than when it is too late and the harm has already been done [49]. Since the right to a clean and healthy environment is one of the fundamental rights [8], the court should have discretion to extend the period of limitation when there is a good reason for delay. Even if this is the case, however, since the discretion is with the court, it may be difficult for the plaintiff to persuade the court to agree to extend the time in cases where a third party has been prejudiced by the delay. For this very reason, the plaintiff is advised to conform to the primary duty that the application must be made promptly.

In legal standing in relation to environmental proceedings, the next issue that requires due consideration is identifying the plaintiff(s) who could initiate legal action when damage is caused to

the environment. When damage is done to the environment under the FDRE's legal system, several persons have legal standing, so that it is pertinent to scrutinize whether there could be a joinder of plaintiffs in the legal action. In legal action, "joint plaintiffs" simply means plaintiffs consisting of more than one person or party who seeks to file suit against the same defendant or defendants. On the basis of the Civil Procedure Code of the FDRE, persons are entitled to join as plaintiffs if two conditions are satisfied [51]: (1) the right to relief must arise from the same transaction or series of transactions, whether jointly, severally or in the alternative; and (2) if such persons brought separate actions, a common question of law or fact would arise. In environmental proceedings, the right to a clean and healthy environment is a collective as well as a personal right, and the right to bring legal action does not require the demonstration of any vested interest. Furthermore, legal personality in an environmental proceeding is multifaceted in that such a proceeding may bestow legal personality to the future generations and to the environment itself as a separate legal entity. Thus, at times when the two conditions set in the civil procedure are fulfilled, the joinder of plaintiffs should be allowed when bringing legal action against the same defendant(s).

The corollary to the identification of the plaintiff(s) is the identification of the responsible party—that is, the defendant(s). As has already been stated, in a judicial review in relation to an environmental proceeding, the complaint is that the environmental authority either allows a harmful or polluting activity to be carried out or does not prevent the polluter(s) from continuing. In this respect, we can see at least two parties for the pollution of the environment; these are the polluter(s) and the environmental authority. As a corollary, it is important to scrutinize whether there is ground for the joinder of defendants. Under the Ethiopian legal system:

All persons against whom the right to any relief is alleged to exist, whether jointly, severally or in the alternative, may be joined as defendants where, if separate suits were brought against such persons, any common question of law or fact would arise [51].

In this provision, there is only one condition for joinder of defendants, namely a common question of law or fact. In line with this requirement for the joinder of defendants, in public interest litigation in relation to environmental proceedings, it is fairly easy to pinpoint the existence of a common question of law or fact that would make the environmental authority and the polluter(s) joinder defendants. Consequently, we can bring legal action against them jointly. At this juncture, however, it is important to take notice that it is not necessary that every defendant be interested as to all the relief claimed in any suit against him [51].

That is, the plaintiff(s) could seek some relief against one defendant and different or alternative relief against others. The point is, therefore, that the plaintiff may join all defendants if there is any common question of law or fact irrespective of the difference in the type of relief claimed from each defendant. In other words, the plaintiff does not have to claim the same relief against all defendants, and the court will enter a judgment against each defendant to the extent that the defendant may be found liable to the plaintiff(s). Accordingly, the relief claimed against one defendant may be inconsistent with that claimed against the other defendants. Hence, the environmental authority or the polluter/s have no ground for objection from being joinder defendants on the basis of the fact that they may not be liable for all or the same relief the plaintiff claims.

Following the identification of the parties to a suit, the next issue that should be addressed is the question of material jurisdiction in an environmental proceeding. Under the Ethiopian legal system, the Civil Procedure Code [51] and the Federal Courts Proclamation [71] provides that a suit the subject matter of which cannot be expressed in terms of money shall be entertained by the Federal First Instance Court having local jurisdiction.

The same procedure applies in environmental proceedings since the subject matter of the suit in environmental proceedings may not be expressed in terms of money.

Before concluding the discussion, to have a full-fledged understanding of this topic, it is also important to look briefly at the principle of *res judicata*. According to this principle, if a state acts

properly in its capacity to address the damage to the environment, the private parties do not have an interest that is distinct from the interest on behalf of whom the state is acting, and they will in turn be bound by *res judicata*. Nonetheless, when there are damages that have not yet been entertained by the government, they are recoverable without being hampered by the principle of *res judicata*.

In cases where the claim to damage to the environment is initiated by public interest groups, the law provides the following.

Where persons litigate in good faith in respect of public or private rights claimed in common for themselves and others, all persons interested in such rights shall be deemed to claim under the person so litigating [51].

An a contrario reading of the provision implies that, if the previous proceeding was not bona fide public interest litigation, the rule of *res judicata* will not operate and the subsequent proceeding would not be barred by *res judicata*.

3.2. *Obstacles to Environmental Public Interest Litigation in Ethiopia*

3.2.1. The Judiciary System of Ethiopia and Environmental Public Interest Litigation

In the Federal Democratic Republic of Ethiopia, judicial power is vested in both the federal government and the regions [8,71]. Correspondingly, this section appraises the federal and AAA judiciary system in the context of public interest litigation.

(1) Federal Government Judiciary System

Based on the FDRE Constitution, in Ethiopia “Supreme Federal judicial authority is vested in the Federal Supreme Court. The House of Peoples’ Representatives may, by two-thirds majority vote, establish nationwide or in some parts of the country only, the Federal High Court and First-Instance Courts it deems necessary” [8].

Accordingly, the federal government has established the Federal Supreme Court, the Federal High Court and the Federal First Instance Court with civil, criminal and labor divisions [71]. They shall have civil jurisdiction over, among other things, cases to which a federal government organ is a party; cases regarding the liability of employees of the federal government in connection with their official responsibilities; and suits relating to business organizations registered or formed under the jurisdiction of the federal government organs [71].

Accordingly, civil cases relating to the Ministry of Environment, Forest and Climate Change of Ethiopia and the Ministry of Water, Irrigation and Electricity and their officials, and the federally licensed industries are subject to jurisdiction of the federal courts.

Correspondingly, the federal courts shall settle cases or disputes submitted to them within their jurisdiction on the basis of federal laws, international treaties and regional states’ laws where the cases relate to the same [71].

In parallel, the Civil Procedure Code of Ethiopia shall apply with respect to matters not provided for under this Proclamation in so far as they are not inconsistent therewith [71].

(2) Addis Ababa Administration (AAA) Judiciary System

On the basis of the FDRE Constitution in Ethiopia, “states shall establish State Supreme, High and First-instance Courts. Particulars shall be determined by law” [8]. Accordingly, the AAA has established the Addis Ababa City Courts and Qebele Social Courts; and Labour Relations Board, Civil Service Tribunal, Tax Appeals Commission and Urban Land Clearance Matters Appeals Commission, which are entrusted with judicial power [72].

Correspondingly, the Addis Ababa Administration Courts shall have, among other things, civil jurisdiction over suits arising in connection with the regulatory powers and functions of the executive

and municipal service bodies of the administration [72]. Accordingly, civil cases relating to the Addis Ababa Environmental Protection Authority, Addis Ababa Cleanliness Administration Agency, Addis Ababa Solid Waste Re-use and Disposal Project Office and Addis Ababa Water and Sewerage Authority are subject to the jurisdiction of the Addis Ababa Administration Courts.

Nevertheless, at this juncture, it is important to note that neither the federal government nor the AAA is in position to establish environmental divisions that flexibly and innovatively adopt public interest litigation in the context of environmental justice [23,73,74].

3.2.2. Civil Procedure Code of Ethiopia and Environmental Public Interest Litigation

Subject to traditional litigation (see details in Section 2.4.1 (a)), the Civil Procedure Code of Ethiopia was drafted by the Codification Department of the Ministry of Justice. The Code was promulgated as a Decree [51] by the Emperor [75], and it became effective on 8 October 1965.

The Civil Procedure Code has stipulated that no party may be a plaintiff in a suit unless he (she) has a vested interest in the suit [51]. Besides, save suits by paupers [51], no statement of claim shall be admitted under Art. 230 of the Code except after payment of the prescribed court fee [51]. This implies that the Code is literally designed to translate traditional litigation into action.

Recently, Ethiopia has given a green light to environmental public interest litigation [9]. However, the prototype case APAP vs. the Federal Environmental Protection Authority of Ethiopia has demonstrated that the case was entertained in a landscape equipped for traditional litigation [23].

An issue of considerable practical importance in public interest litigation is who pays the bill for environmental litigation. It is an unfortunate but inescapable fact of life that the energy of the legal system is responsive largely to financial incentives.

It is important to note that litigation costs may be awarded to any party. This means that plaintiffs may be assessed with litigation costs. Accordingly, high costs of civil procedure and especially the risk of losing the case and, as a result, having to pay the costs incurred by the other party may deter public interest groups. In other words, unless public interest groups are protected from awards of litigation costs for all but extreme instances of bad faith and frivolous assertion, the ends of the public interest standing measures will be served poorly.

Thus, to have actual public interest litigation, the government should improve public participation in the legal process by changing the cost rules for cases brought forward by private litigants that are demonstrably in the public interest.

Thus, there is a pressing need for Ethiopia to cautiously revise its Civil Procedure Code in a way that accommodates the peculiar features of public interest litigation.

3.2.3. Civil Society Organizations and Environmental Public Interest Litigation in Ethiopia

Environmental organizations play a critical role in shaping the implementation of our environmental laws. One of the primary methods these groups use is judicial challenges to agency regulations or actions that these groups believe will harm the environment [76].

In Ethiopia, there are Ethiopian Charities [77], Ethiopian Resident Charities [77 and Foreign Charities [77]. On the basis of the Charities and Societies Proclamation of Ethiopia, a charity refers to an institution that is established exclusively for charitable purposes and gives benefit to public, charitable purposes, including both rights and development-based activism [77].

Nevertheless, at the moment, the advancement of human and democratic rights and the promotion of the efficiency of the justice and law enforcement services can be exercised only by Ethiopian Charities [77]. As a result, Ethiopian Resident Charities/Societies, and Foreign Charities cannot exercise environmental justice-based human rights activism.

Thus, at the moment, it is safe to conclude that the scope of public interest standing in Ethiopia is highly restrictive for Civil Society Organizations.

3.3. *The Role of Public Interest Litigation in the Achievement of Sustainable Waste Management in the Addis Ababa Administration of Ethiopia*

In Ethiopia, the federal and state legislative, executive and judicial organs at all levels have a duty to respect and enforce the right to a clean and healthy environment [8,9].

In addition, Ethiopia is committed to fostering common but differentiated responsibilities that avoid conflicts of interest and duplication of efforts by assigning responsibilities to separate organizations for environmental and natural resource development and management activities on the one hand and environmental protection, regulation and monitoring on the other [65,68,78,79].

Correspondingly, this research assesses the role of public interest litigation in encouraging the federal and regional environmental protection and management organs of Ethiopia to implement environmental tax and the command-and-control instruments of the polluter-pays principle as means of achieving sustainable waste management in Ethiopia.

3.3.1. Municipal Waste and Effluent Management

Municipal Waste Management

In the Addis Ababa Administration, the Addis Ababa Cleanliness Administration Agency (AACAA) [80–82], Addis Ababa Solid Waste Re-use and Disposal Project Office (AASWRDPO) [80–82] and Addis Ababa Water and Sewerage Authority (AAWSA) [80–84] are, respectively, bound to ensure environmental tax-based sustainable solid waste collection, landfill and sewerage services in the AAA [80]. Correspondingly, this section is allocated to appraise the law and the practice of their respective sanitary service provision.

a. Solid Waste Management

In the AAA, the Addis Ababa Cleanliness Administration Agency (AACAA) is bound to internalize the social cost of its solid waste collection service [81] and to incentivize sustainable solid waste management through the implementation of a solid waste charge [7,9,80–82,85].

However, since the rate of the solid waste charge is so nominal [12], and there is only a partly effective solid waste charge collection system [11], AACAA is slightly translating the distributive role of the solid waste charge into action [12,86–88].

As a result, the lion's share of the social cost of its solid waste collection service [86–88] is covered by the subsidy it is allocated from the AAA [12,24–27].

At the same time, in the AAA, the Addis Ababa Solid Waste Re-use and Disposal Project Office (AASWRDPO) is bound to internalize the social cost of its landfill service and to incentivize sustainable solid waste management through the practical implementation of a landfill charge [7,9,80–82].

Nevertheless, since the rate of the landfill charge is so nominal [12] and there is only a partly effective landfill charge collection system [11], AASWRDPO is slightly translating the distributive role of the landfill charge into action [12]. Consequently, the lion's share of the social cost of its landfill service [89–91] is covered by the subsidy it is allocated from the AAA [12,24–27].

Simultaneously, since the rates of the solid waste and landfill charges are nominal, they are not creating an incentive for the residents of the AAA to sustainably manage their solid waste [14,92].

b. Sewerage Service

In the AAA, the Addis Ababa Water and Sewerage Authority (AAWSA) is bound to internalize the social cost of its sewerage service and to incentivize sustainable sewerage management through the practical implementation of sewerage service charges, including sludge dislodging and sewer service charges [7,9,80–84].

Nevertheless, since the rate of the sewerage service charge is so nominal [12], AAWSA is only slightly translating the distributive role of sludge dislodging charge [12].

In addition, since the rate of the sewerage service charges is nominal, it is not creating an incentive for the residents of the AAA to sustainably manage their sludge and sewage [93,94].

As a logical extension of the foregoing points, at the moment, one can safely conclude that the sanitary service provision organs of the AAA, i.e., AACAA, AASWRDPO and AAWSA, are not properly exercising their respective sanitary service provision.

3.3.2. Effluent Management

a. The Ministry of Environment, Forest and Climate Change of Ethiopia (MEFCCE)

In line with environmental federalism, the MEFCCE has a duty to enforce the federal environmental policies and laws and to spearhead the assurance of environmental protection [65,68,95]. In parallel, it is bound to avoid overlaps, wastage and gaps in their implementation [78], and where necessary, delegate part of its mandates to other federal/regional organs [68,95]. Accordingly, this section is allocated to appraise the law and the practice of its environmental impact assessment, permit and regulation systems.

(1) Environmental Impact Assessment System

Being sector neutral [79], the MEFCCE has the mandate to establish a federal environmental impact assessment (EIA) system for projects that are subject to licensing, execution and supervision by a federal agency or that are likely to produce a trans-regional impact. As a corollary, it is responsible for evaluating and monitoring the implementation of the EIA study and environmental management plans of the projects, respectively [68,78,96].

In practice, the MEFCCE has, on the basis of the decision of the Council of Ministers of Ethiopia (CME), delegated its power to review EIAR to sectoral institutions [97]. Subsequently, the MWIEE [97] and Ministry of Industry of Ethiopia [97,98] are, inter alia, reviewing the EIA studies of the proponents that fall in their sectoral jurisdiction.

Since the delegation of the power to review EIAR is bestowed on sectoral institutions that have a conflict of interest in the review, and because it is performed on the basis of the decision of the CME, it is vulnerable to substantive and procedural ultra-vires [98].

Thus, while the EIA mandate of the MEFCCE is consonant with environmental federalism, the delegation of part of it to sectoral institutions is susceptible to sectoral conflict of interest.

(2) Environmental Permit and Regulation System

Where projects are subject to federal licensing, execution and supervision or when they are likely to produce trans-regional impact, they are subject to the MEFCCE permit and regulation system [10,68,96].

In practice, since it has delegated its industrial, manufacturing and service delivery permit issuance and renewal mandate to the Addis Ababa Environmental Protection Authority (AAEPA) [99,100], its effluent permit and renewal mandates on proponents that are likely to produce a trans-regional/national impact in the AAA by default fall within the domain of AAEPA.

Thus, while the permit and regulation mandates of the MEFCCE are consonant with environmental federalism, the delegation of its permit and regulation mandates to AAEPA is susceptible to inter-state conflict of interest.

b. The Ministry of Water, Irrigation and Electricity of Ethiopia (MWIEE)

In Ethiopia, the Ministry of Water, Irrigation and Electricity (MWIEE) may issue permits for the release of treated waste into rivers linking two or more states or crossing the territorial jurisdiction of Ethiopia and may collect effluent charges from permit holders [101,102].

The inbuilt area of Addis Ababa is found in the Akaki River basin, and the absolute majority of industries in it dispose their effluent into the Akaki River, which joins to the trans-regional Awash River that crosses the Oromia and Somalia National Regional States of Ethiopia [103].

Concurrently, the MWIEE is bound to internalize the cost of restoration of authorized degradation of the Akaki River and to incentivize sustainable effluent management through the practical implementation of a federal effluent charge [7,101].

In practice, since the federal government has not yet developed the rate of its effluent charge [12], it has no operating effluent permit system [11] and there is no effluent charge collection system [11], the MWIEE is neither internalizing the social cost of authorized degradation of the Akaki River nor creating an incentive for the industries to sustainably manage their effluent [12].

Hence, the absolute majority of the industries are hardly using the full range of effluent abatement options, and they are directly disposing their untreated effluent into the Akaki River [12,20,21,23,73,74,98,103–105].

As a logical extension of the foregoing points, at the moment, one can safely conclude that the MEFCCE and MWIEE are not fully exercising their mandate in the protection and management of the Akaki River.

3.3.3. Public Interest Litigation Opportunities in the Achievement of Sustainable Waste Management

a. Public Interest Litigation in the Addis Ababa Administration (AAA) of Ethiopia

As clearly indicated under Section 3.3.1, the Addis Ababa Cleanliness Administration Agency (AACAA), Addis Ababa Solid Waste Re-use and Disposal Project Office (AASWRDPO) and Addis Ababa Water and Sewerage Authority (AAWSA) are not properly exercising their mandate. Consequently, the AAA is subject to prevalent municipal waste mismanagement.

Thus, any person, without the need to show vested interest, can lodge a complaint with the Addis Ababa Environmental Protection Authority (AAEPA) against the sanitary service provision organs that fail to provide sustainable solid waste and sewerage management [106].

When the AAEPA fails to give a decision within thirty days or when the person who has lodged the complaint is dissatisfied with the decision, he may institute a case in the AAA first instance court within sixty days from the date the decision was given or the deadline for decision has elapsed [106].

Ultimately, following exhaustion of local remedies or when there is undue prolongation, the public interest groups can lodge their complaint against the government of Ethiopia at the African Commission on Human and Peoples' Rights [107].

Thus, at the moment, it is safe to conclude that public interest litigation can play an effective role in combating unsustainable solid waste and sewerage management in the AAA of Ethiopia.

b. Public Interest Litigation in the Federal Jurisdiction of Ethiopia

As clearly indicated under Section 3.3.2, the Ministry of Environment, Forest and Climate Change of Ethiopia (MEFCCE) and the Ministry of Water, Irrigation and Electricity (MWIEE) are not properly exercising their mandate. Consequently, the absolute majority of industries in the AAA dispose their effluent into the Akaki River [103].

Thus, any person, without the need to show vested interest, can lodge a complaint with the MEFCCE against itself and the MWIEE for their failure to realize sustainable effluent management [9].

When the MEFCCE fails to give a decision within thirty days or when the person who has lodged the complaint is dissatisfied with the decision, he may institute a case in the federal first instance court within sixty days from the date the decision was given or the deadline for decision has elapsed [9].

Ultimately, following exhaustion of local remedies or when there is undue prolongation, the public interest groups can lodge their complaint against the government of Ethiopia at the African Commission on Human and Peoples' Rights [107].

As a corollary, at the moment, it is safe to conclude that public interest litigation can play an effective role in combating unsustainable effluent management in Ethiopia.

4. Conclusions

This research assessed the role of public interest litigation in the achievement of sustainable waste management in the AAA of Ethiopia. It has first shown Ethiopia's commitment to sustainable waste management, implement environmental tax and the command-and-control instruments of the polluter-pays principle and public interest litigation within the context of environmental justice. Secondly, it has shown that public interest litigation is one of the innovative techniques in a struggle against waste mismanagement across all legal systems. Thirdly, it has demonstrated the potential role of public interest litigation in Ethiopia for encouraging the federal and regional environmental protection and management organs to implement environmental tax and command-and-control instruments. Fourthly, it has uncovered that public interest litigation is not fully compatible with the Civil Procedure Code of Ethiopia. Fifthly, it has shown the failure of the judiciary system of Ethiopia to accommodate environmental courts and tribunals that flexibly and innovatively adopt public interest litigation. Sixthly, it has revealed that, in Ethiopia, the scope of public interest standing is highly restrictive for Civil Society Organizations (CSO). Finally, it implies that the legal viability and administrative feasibility of environmental public interest litigation in Ethiopia is in its infancy, and its crystallization is partly contingent on the cautious review of the Civil Procedure Code and CSO laws and on greening the judiciary system.

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